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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/528,557 | 03/21/2005 | Pascal Bruna | Q86514 | 6383 |
| 23373 | 7590 | 11/01/2005 | EXAMINER | |
| SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037 | | | BARNEY, SETH E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3752 | |

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/528,557

Applicant(s)

BRUNA ET AL.

Examiner

Seth Barney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "removeable cover" of claim 9 and the "dose fractioning means" of claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: Throughout the specification there are no subheadings for each section. On page 5, line 22, the "lateral access means" is referenced as 14 and then on line 29 the "window" is referenced as 14.

Appropriate correction is required.

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1,2,4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,905,365 to Colombo in view of U.S. Patent No. 5,137,528 to Crose.

Regarding claim 1, Colombo discloses means for actuating fluid spray device such that the actuation element is lateral to the unit and is displaceable in a direction different to the displacement direction of the spray means. Colombo does not disclose a reservoir that is a sealed unit separate from the body.

Crose discloses a spraying device comprising a body (14) provided with a spray orifice (17), a reservoir (1) containing the fluid to be sprayed, spray means (15), the reservoir being closed in a sealed manner before the spray device is actuated for the first time, the body including reservoir opening means (16) adapted to open the reservoir from the body, the reservoir being filled with fluid and sealed hermetically before it is assembled in the body, the body including receiver means (14) for receiving the reservoir, and later access means for enabling the filled reservoir to be assembled sideways into the body and to be secured therein.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the entire spray device of Crose (Figure 2) for the spray body portion of Colombo in order to more precisely and more ergonomically actuate the device of Crose.

Regarding claim 2, both Crose and Colombo have a window in the spray body.

Regarding claim 4, Crose discloses a barbed arrow (not shown, see column 5 lines 28 to 32) to secure the reservoir.

Regarding claim 5, the reservoir of Crose is a hollow tube that is closed in a sealed manner by first and second plugs (6,7) disposed in the tube, the fluid being disposed between the first and second plugs. See Figure 1.

Regarding claim 6, the spray means of Crose includes an axially-displaceable rod (15) that co-operates with the first plug of the reservoir.

Regarding claim 7, the reservoir opening means include piercing means for pierce the second plug. See Figure 2 of Crose.

Regarding claim 8, Colombo as modified has the body, the spray means, the actuator means, and the reservoir opening assembled to form a unit.

Regarding claim 9, the spray device of Crose a cover (the barrel of the syringe). See column 5 lines 19 to 23.

Regarding claim 10, neither Crose nor Colombo disclose dose fractioning means. As admitted by applicant on page 5 of the specification, it is commonly known in the art to use dose-fractioning means, and it would have been obvious to one having ordinary skill in the art at the time the invention was made to add dose fractioning means to the

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spray device of Corse in order to only spray a desired amount of fluid with each actuation.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,905,365 to Colombo and U.S. Patent No. 5,137,528 to Crose as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 4,581,022 to Leonard et al.

Neither Colombo nor Crose disclose two-diametrically opposed windows. U.S. Patent No. 4,581,022 to Leonard discloses two-diametrically opposed windows on an analogous spraying device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spraying device of Crose with two diametrically opposed windows in order to allow the user to see how much fluid is left from both sides of the sprayer.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,542,934 to Silver discloses a syringe having two barrels to refill the reservoir. U.S. Patent No. 5,433,352 discloses a spraying device having a lateral actuation member. U.S. Patent No. 4,444,560 to Jacklich discloses a lateral actuation member. U.S. Patent No. 5,480,390 to Hajishoreh discloses a syringe having a reservoir refill.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-

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4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

sb



David A. Scherbel
Supervisory Patent Examiner
Group 3700